(21)

No. 120, Original

In the Supreme Court of the United States
October Term, 1994

STATE OF NEW JERSEY,

Plaintiff,

- v. -

STATE OF NEW YORK,

Defendant,

- and -

THE CITY OF NEW YORK, RUDOLPH W. GIULIANI, as Mayor of the City of New York, and the CITY COUNCIL OF THE CITY OF NEW YORK,

Proposed Defendants-Intervenors.

MOTION FOR LEAVE TO INTERVENE AS PARTY DEFENDANTS BY THE CITY OF NEW YORK, ITS MAYOR, AND ITS CITY COUNCIL; AFFIDAVIT AND BRIEF IN SUPPORT OF MOTION FOR LEAVE; AND PROPOSED ANSWER.

PAUL A. CROTTY
Corporation Counsel
of the City of New York
Attorney for Proposed
Defendants-Intervenors
100 Church Street
New York, New York 10007
(212) 788-1072

LEONARD KOERNER,*
STANLEY BUCHSBAUM,
KRISTIN M. HELMERS,
Of Counsel.

*Attorney of Record February 23, 1995

95 pp

TABLE OF CONTENTS

No. 120, Original

In the Supreme Court of the United States
October Term, 1994

STATE OF NEW JERSEY,

Plaintiff,

- v. -

STATE OF NEW YORK,

Defendant,

- and -

THE CITY OF NEW YORK, RUDOLPH W. GIULIANI, as Mayor of the City of New York, and the CITY COUNCIL OF THE CITY OF NEW YORK,

Proposed Defendants-Intervenors.

MOTION FOR LEAVE TO INTERVENE AS PARTY DEFENDANTS

Pursuant to Rule 17 of the Rules of the Supreme Court of the United States, the City of New York, its Mayor, Rudolph W. Giuliani, and its governing legislative body, the City Council of the

City of New York, hereby respectfully request leave of the Court to intervene as party defendants in this border dispute between the State of New Jersey and the State of New York concerning Ellis Island, such intervention being proper for the reasons set forth in the brief submitted herewith.

Dated: New York, New York
February 23, 1995

PAUL A. CROTTY
Corporation Counsel of
the City of New York
Attorney for Proposed
Defendants-Intervenors

LEONARD KOERNER,*
STANLEY BUCHSBAUM,
KRISTIN M. HELMERS,
Of Counsel.

* Attorney of Record

No. 120, Original

In the Supreme Court of the United States
October Term, 1994

STATE OF NEW JERSEY,

Plaintiff,

- v. -

STATE OF NEW YORK,

Defendant,

- and -

THE CITY OF NEW YORK, RUDOLPH W. GIULIANI, as Mayor of the City of New York, and the CITY COUNCIL OF THE CITY OF NEW YORK,

Proposed Defendants-Intervenors.

AFFIDAVIT IN SUPPORT OF MOTION TO INTERVENE

KRISTIN M. HELMERS, being duly sworn, states as follows:

1. I am an Assistant Chief in the Appeals Division of the office of PAUL A. CROTTY, Corporation Counsel of the City

of New York, attorney for the proposed defendants-intervenors. I am admitted to practice law in the New York State Court of Appeals, the highest court of the State of New York; in the United States Court of Appeals for the Second Circuit; and in the United States District Court for the Southern District of New York.

2. This affidavit is submitted in support of the motion by the proposed intervenors seeking leave of the Court to appear as party defendants.

3. As set forth more fully in the brief submitted herewith, the City of New York, its Mayor, and its City Council (collectively referred to hereafter as "the City") seek intervenor status because Ellis Island, which is the focus of the instant border dispute between the States of New York and New Jersey, has

been under the civil jurisdiction of the City of New York since pre-Revolutionary times. Accordingly, the City has a unique and compelling interest in the subject matter of this controversy, including an interest in continuing its local taxing and regulatory powers over the territorial extent of the Island as it now exists. The City's interests are different from, although not adverse to, the sovereign interest of the State of New York in protecting its borders and securing the general welfare of its citizens.

4. Because one of the areas within the City's civil jurisdiction is involved, this office was aware, through contemporaneous news accounts, both of New Jersey's attempt to invoke the original jurisdiction of the Court and of

this Court's May 16, 1994 decision that it would hear the case. Soon thereafter it was decided that we should submit an amicus brief, and we began researching the legal issues.

5. At various times throughout the summer of 1994 I worked with Stanley Buchsbaum, former Chief of the Appeals Division and the attorney who handled the 1954 challenge to the City's imposition of its local sales tax on Liberty (then Bedloe's) Island, Hill v. Joseph, 205 Misc. 441, 129 N.Y.S.2d 348 (Sup. Ct., N.Y. Co.), in locating and analyzing the materials Mr. Buchsbaum had used in defending that case, since the history and legal status of Liberty Island and Ellis Island are closely interrelated. In addition, we began compiling and

analyzing other relevant legal and historical documents.

6. Also during the summer and early fall of 1994, prior to the appointment of a special master, Mr. Buchsbaum and I were in reasonably close contact with Assistant Attorney General John McConnell in Albany, who had been given major responsibility for New York State's defense of the case. From him, we obtained copies of the papers which had been submitted to this Court by the named parties, and we discussed various avenues of research with Mr. McConnell. During this period we were also in touch by telephone with this Court's Chief Deputy Clerk, Francis J. Lorson, discussing on several occasions at what point in the litigation it would be appropriate for us to file an amicus brief.

7. Contemporary news accounts again were the source of our knowledge that, on October 11, 1994, this Court had appointed the Hon. Paul Verkuil to act as special master on the case. We were not aware of how the litigation was progressing, however, until I received a call from Assistant Attorney General McConnell at some point between January 4 and January 6, 1995. Mr. McConnell explained that the matter was now being largely handled out of the Attorney General's New York City office, under the direction of Assistant Attorney General Judith Kramer.

8. I immediately attempted to contact Ms. Kramer, and we finally spoke for the first time by telephone on or about January 11, 1995. During the course of our conversation, Ms. Kramer

mentioned that the special master, at one of his first meetings with counsel, had asked whether anyone was aware of any potential requests for intervention. Since she had had no prior contact with this office, she replied that she did not.

9. After my January 11, 1995 conversation with Ms. Kramer, I immediately contacted the special master to inquire whether an application for intervention by the City could be considered by the Court and, on his advice, I also spoke with Deputy Chief Clerk Lorson. Further legal research on the subject confirmed that there was precedent for permitting a municipality to intervene in a border dispute such as this even though one of the original parties was the parent state, i.e., Texas

v. Louisiana, 416 U.S. 965 (1974). Hence the instant motion, which is being submitted to the Court under date of February 23, 1995.

10. For a complete discussion of the intervention issue, the Court is respectfully referred to the City's brief, found at pages 13-69, infra. We note here only that the City's application meets all of the criteria for intervention at the District Court level set forth in Federal Rule 24(b), meaning that it would be a proper exercise of discretion for a District Court judge to permit intervention; that the prudential considerations which this Court has indicated should be weighed in cases involving its original jurisdiction present no obstacle to intervention; and that the City's unique perspective and

direct access to voluminous materials may aid the Court in reaching a just resolution of this controversy.

Dated: New York, New York
23 February 1995

KRISTIN M. HELMERS

Sworn to before me this
23 day of February, 1995.

NOTARY PUBLIC

PETER J. GATTO
Notary Public, State of New York
No. 01GA5037977
Qualified in New York county
Commission Expires Jan. 17, 1997

No. 120, Original

In the Supreme Court of the United States
October Term, 1994

STATE OF NEW JERSEY,

Plaintiff,

- v. -

STATE OF NEW YORK,

Defendant,

- and -

THE CITY OF NEW YORK, RUDOLPH W. GIULIANI, as Mayor of the City of New York, and the CITY COUNCIL OF THE CITY OF NEW YORK,

Proposed Defendants-Intervenors.

BRIEF IN SUPPORT OF MOTION TO INTERVENE

PAUL A. CROTTY
Corporation Counsel of the
City of New York
Attorney for Proposed
Defendants-Intervenors
100 Church Street
New York, New York 10007
(212) 788-1072

LEONARD KOERNER,*
STANLEY BUCHSBAUM,
KRISTIN M. HELMERS,
Of Counsel.
*Attorney of Record

QUESTION PRESENTED

Whether the Court should permit the City of New York, its Mayor, and its City Council to intervene as party defendants in this border dispute between the States of New York and New Jersey concerning Ellis Island, where (1) the proposed intervenors meet the requirements governing intervention set forth in Rule 24(b) of the Federal Rules of Civil Procedure; (2) the compelling interests which the City of New York wishes to protect are different from those asserted by the State of New York on behalf of its general citizenry, and principles of fairness suggest that the City should be permitted to defend those interests directly; (3) the City's intervention will not complicate the case by introducing new issues or by opening the

floodgates to similar applications by other municipalities; and (4) the interests of the original parties will not be prejudiced by permitting the City to participate in the litigation?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutory Materials

Other Authorities

No. 120, Original

In the Supreme Court of the United States
October Term, 1994

STATE OF NEW JERSEY,

Plaintiff,

- v. -

STATE OF NEW YORK,

Defendant,

- and -

THE CITY OF NEW YORK, RUDOLPH W. GIULIANI, as Mayor of the City of New York, and the CITY COUNCIL OF THE CITY OF NEW YORK,

Proposed Defendants-Intervenors.

BRIEF IN SUPPORT OF MOTION TO INTERVENE

PRELIMINARY STATEMENT

In this dispute in which the plaintiff State of New Jersey is attempting to assert sovereignty and jurisdiction over approximately 24.5 of

the 27.5 acres which currently comprise Ellis Island, the City of New York, its Mayor, and its City Council (hereafter referred to collectively as "the City") seek leave to intervene on the grounds that (1) the City has a direct and compelling interest in the resolution of this controversy, since not only is it facing a threat to its civil jurisdiction, but the relief sought by New Jersey would impact on the City's economic base and interfere, inter alia, with its historic, cultural, aesthetic, and environmental interests in Ellis Island; (2) while these municipal interests are not adverse to those of the defendant State of New York, they are different from the interests of the general citizenry of the State as represented by the New York State

Attorney General; (3) the resources and perspective of the City will aid the Court in resolving this controversy justly; and (4) intervention, if permitted, will neither expand the controversy nor prejudice the current parties.

STATEMENT OF FACTS

(1)

New York City's Unique and Compelling Interests in This Litigation.

The historical record is clear that Ellis Island has long been considered within the physical boundaries and civil jurisdiction of the City of New York. The pre-Revolutionary Montgomerie Charter, for example, issued by the Governor of the Provinces of New York and New Jersey on January 15, 1730, confirms

that Ellis Island (variously identified in older documents as "Buckin's Island" or one of the three "Oyster Islands") was included within the boundaries of the City at that time, placing the Island within what was then known as the City's "South Ward." Jerrold Seymann, Colonial Charters, Patents and Grants to the Communities Comprising the City of New York (NYC Board of Statutory Consolidation, 1939), pp. 280-281.

This situation was unaffected (1) by the City's post-Revolutionary 1794 cession to the people of the State of New York, for the purpose of erecting fortifications for the defense of the City, of Governor's Island and Bedloe's Island (the current "Liberty Island"), as well as "the soil between High Water Mark and Low Water Mark adjacent to and around

the said Island commonly called Buckin's Island, Ellis Island or Oister Island" (Minutes for the Common Council of the City of New York, April 14 and April 21, 1794); and (2) by the State's acquisition of title by condemnation, and subsequent cession of the Island itself to the federal government, by Chapter 51 of the Laws of 1808 -- also for fortification purposes.[1] Shortly after the City's 1794 cession to the State, Chapter 29 of the Laws of 1803 increased the number of wards in New York City to nine but still described the "First Ward" as containing Ellis Island. After the 1808 conveyance by the State to the federal government,

---

[1] Both the City's conveyance to the State, and the State's conveyance to the federal government, contained express reverter provisions in the event that the Island ceased to be used for fortifications.

further increases in the number of wards within the City in 1817 and 1825 did not change the delineation of Ellis Island as part of the "First Ward." See, Ch. 285, L. 1817; Ch. 195, L. 1825.

Both prior to and following ratification of the 1834 Compact on which New Jersey rests its current claims, Ellis Island was described in the New York Revised Statutes as part of the County of New York, which was itself subsumed, as it is today, within the City of New York. Compare, Rev. Stat. of the State of N.Y. (1829), Ch. II, Title 1, § 2, par. 5 and Ch. II, Title 5, § 1, with Rev. Stat. of the State of N.Y. (1836), Chap. II, Title 1, § 5 and Title 5, § 1. Similarly, after New York State, in 1880, relinquished title and jurisdiction over the subaqueous lands

surrounding Ellis Island to the United States (with the reservation that the cession of jurisdiction would continue only as long as the United States owned the Island and the adjacent subaqueous lands), Ellis Island continued to be considered part of New York City. See, e.g., New York Consolidation Act of 1882 (L. 1882, Ch. 410, § 1); the Greater New York [City] Charter (L. 1897, Ch. 378; L. 1901, Ch. 466, § 1). That status continued despite New Jersey's 1904 transfer (without reservation) of title and jurisdiction over the subaqueous lands, even as the Island's size was increased by the filling operations undertaken by the federal government after 1890, and it remains in effect today. See, Administrative Code of the City of New York, § 2-202(1).

As an entity included within the City of New York, Ellis Island has been subject to the sales tax rules and regulations issued by the City (which imposes a local sales tax in addition to that levied by the State of New York) since the local tax was first implemented in 1938. First Annual Compilation of the Rules and Regulations of New York City Agencies (1938-1939)) 52; 1 Cumulative Compilation of the Rules and Regulations of New York City Agencies 582 (1967). Cf. Hill v. Joseph, 205 Misc. 441, 129 N.Y.S.2d 348 (Sup. Ct., N.Y. Co., 1954) (holding that New York City was properly collecting sales tax on Bedloe's [now Liberty] Island). Any residents or businesses operating on the Island are also subject to the applicable local income and business tax regulations.

In addition, Ellis Island as an entity, no matter what the extent of its acreage, has been treated as part of New York City, for United States Census purposes, since at least 1910. See, e.g., Laidlaw, Population of the City of New York, 1890-1930, pp. 53, 85; U.S. Department of Commerce, Bureau of the Census, Housing (Supplement to the First Series Housing Bulletin for New York, 1940 Census); U.S. Dept. of Commerce, Bureau of the Census, Census Tract Statistics, New York, New York (1952); id. (1990). Certain monetary grants to the City from the federal government, as well as from the State of New York itself, are based on U.S. Census figures. Cf., Carey v. Klutznick, 637 F.2d 834, 836, 838 (2nd Cir. 1980) (City of New York, in addition to State of New York

acting as parens patriae, had standing to challenge the methodology of the 1980 Census because, inter alia, of injury to the municipality's interests as the direct recipient of federal funds), citing City of Camden v. Plotkin, 466 F.Supp. 44, 47-51 (D.N.J. 1978). Accord, City of New York v. U.S. Department of Commerce, 713 F.Supp. 48, 50 (E.D.N.Y. 1989) (same conclusion with respect to a challenge to the methodology of the 1990 Census).

Finally, New York City's interest in Ellis Island is not limited to the economic sphere. For example, on November 16, 1993, the Island was designated an "Historic District" pursuant to the New York City Landmarks Preservation Law. See, Charter of the City of New York, § 3020; Administrative

Code of the City of New York, Ch. 3, Title 25. The Historic District designation was premised on the fact that the buildings and other improvements on the Island "have a special character and special historical and aesthetic interest and value which represent one or more eras in the history of New York City...," and which thus cause this area "to constitute a distinct section of the City." Ellis Island Historic District Designation Report, "Findings and Designation," p. 71. More particularly, the Designation Report, while recognizing that the Island has become a "symbol of identity" for all citizens descended from voluntary immigrants, nevertheless points out that, "of the approximately twelve million immigrants to the United States [who] have passed through Ellis Island,

some half of that number were received by New York City[,] making it particularly significant for the city's history . . . ." Id.[2]

---

[2] New York City's Landmarks Preservation Law is widely recognized as one of the most effective in the area of historic preservation. See, Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978). Any improvements within a New York City Historic District become subject, under the Landmarks Law, to a series of regulations governing future changes to the designated improvements. While Ellis Island is currently administered by the National Park Service ("NPS"), the Park Service, in accordance with established practice, consults with local governments concerning changes to properties designated for historic preservation purposes within the jurisdiction of those localities. In the case of Ellis Island, the NPS expressly stated that it had no objection to the Landmarks Preservation Commission's decision to designate the Island as an Historic District. Nor is it unusual for federally-controlled properties to become subject to the New York City Landmarks Preservation Law: the U.S. Customs House, the Statue of Liberty, Grant's Tomb, Hamilton Grange, and several federal courthouses and forts, as well as various buildings on

(continued...)

(2)

Background to the City's Motion to Intervene.

With respect to the current litigation, the Corporation Counsel of the City of New York, who represents the City and its interests in all litigation, became aware, through contemporaneous news accounts, of this Court's May 16, 1994 decision to resolve New Jersey's claim to all but approximately three acres of Ellis Island, as well as its appointment of the Honorable Paul R. Verkuil as special master on or about October 11, 1994. However, as set forth in the affidavit of Assistant Corporation Counsel Kristin M. Helmers, submitted

---

[2] (...continued)
Governors Island, have been given "Landmark" status under the City's statute.

herewith, the City originally believed that its participation in a dispute such as this would be limited to submission of an amicus curiae brief. We now believe, for the reasons set forth herein, that it is appropriate that the City be granted intervenor status so that it may undertake a more active defense of its interests and aid this Court directly in reaching a just resolution of the claims before it.

SUMMARY OF ARGUMENT

The City of New York's request for permission to intervene as a party defendant meets all the requirements which this Court has indicated are applicable in cases subject to its original jurisdiction.

First, to the extent that this Court looks to the Federal Rules for guidance,

the City has clearly satisfied the threshold requirements of Rule 24(b), which governs permissive intervention. The City's motion is timely, as "timeliness" has been interpreted by this Court and the lower federal courts. There are also questions of law and fact common to the main action and the City's defense -- including, inter alia, the question of whether, despite filling operations which enlarged the original size of Ellis Island after the States of New Jersey and New York entered into the Compact of 1834, and despite various cessions to the federal government on the part of both States, the entirety of the Island as it now exists remains within the civil jurisdiction of the City of New York.

Secondly, the prudential considerations which this Court, on several occasions, has indicated should enter into any evaluation of a motion to intervene, present no impediment to the granting of the City's motion. The compelling interests which the City of New York wishes to protect are not only unique to this particular municipal corporation, as distinct from other municipal corporations within the State, but different from the interests asserted by the State of New York on behalf of its general citizenry; accordingly, principles of fairness suggest that the City should be permitted to defend those interests directly. The City's intervention will certainly not complicate the case by either introducing new issues or by opening the floodgates to

similar applications by other private or governmental entities -- factors which this Court considered significant in cases such as Utah v. United States, 394 U.S. 89 (1969), and New Jersey v. New York, 345 U.S. 369 (1953). Nor will either of the original parties be prejudiced by permitting the City to become a formal part of this litigation at a point where discovery is still in its initial stages. Participation as an intervenor, on the other hand, can make the City's unique perspective and resources more directly available to the Court in reaching a just resolution than would be possible if the City's only role were that of an amicus curiae.

Finally, this Court's decision to permit intervention by the City of Port Arthur Texas, in Texas v. Louisiana, 416

U.S. 965 (1974), provides sound precedent for granting the instant motion by the City of New York. As in the case at bar, Texas v. Louisiana concerned a border dispute between two states in which a political subdivision of one of the original parties sought intervention to protect its particularized interest in an island property whose fate would be determined by the Court. This Court's earlier refusal to permit intervention by the City of Philadelphia in New Jersey v. New York, 345 U.S. 369 (1953), by contrast, has little bearing on the case at bar. Not only did New Jersey v. New York concern water rights rather than a border dispute, but it was clear that the City of Philadelphia's interest in obtaining its proper share of the waters of the Delaware was no different from

that of myriad other municipalities located on both shores of the river. Here, the City of New York, like the City of Port Arthur in Texas v. Louisiana, is asserting an interest unique to itself. Under such circumstances, intervention is appropriate.

ARGUMENT

THE CITY OF NEW YORK SHOULD BE PERMITTED TO INTERVENE AS A PARTY DEFENDANT BECAUSE IT MEETS THE REQUIREMENTS FOR PERMISSIVE INTERVENTION UNDER FRCP 24(b), THE STANDARD BY WHICH THIS COURT HAS TRADITIONALLY BEEN GUIDED IN GRANTING OR DENYING SUCH MOTIONS IN CASES INVOLVING ITS ORIGINAL JURISDICTION.

(1)

The Standard Governing Intervention in Cases of Original Jurisdiction.

In considering requests to intervene in cases involving this Court's exercise of original jurisdiction, the Federal Rules of Civil Procedure serve to guide the Court's exercise of its discretion, but are not binding. Arizona v. California, 460 U.S. 605, 614 (1983); Utah v. United States, 394 U.S. 89, 95 (1969); Stern, Gressman, Shapiro, and Geller, Supreme Court Practice (7th Ed.,

1993), p. 478. Federal Rule 24(a) governs intervention as of right, while the less stringent Rule 24(b) comes into play when a proposed party seeks permissive intervention.

The latter provision, by its own terms, states that intervention may be granted where the application is "timely" and the "applicant's claim or defense and the main action have a question of law or fact in common." FRCP 24(b). In other words, the Federal Rules permit "an appeal [to be] made to the Court's good sense to allow persons having a common interest with the formal parties to enforce the common interest with their individual emphasis." Missouri-Kansas Pipe Line Co. v. United States, 312 U.S. 502, 506 (1941). Accord, Hodgson v. United Mine Workers of America, 473 F.2d

118, 130 (D.C. Cir. 1972) ("Rule 24 implements the basic jurisprudential assumption that the interest of justice is best served when all parties with a real stake in a controversy are afforded an opportunity to be heard").

In Arizona v. California, supra, 460 U.S. 605, this Court permitted certain Indian Tribes to intervene in a dispute between the two states concerning water rights in the Colorado River basin, despite the fact that the United States had already intervened in the litigation to protect the water rights on the reservations occupied by those same Tribes. 460 U.S. at 608, 612, 613. In so doing, the Court noted that the Indian Tribes had satisfied the standards for permissive intervention under Rule 24(b), observing more particularly that they

would necessarily be bound by any judgment. Accordingly, despite the fact that the United States formally represented their interests, the Court concluded that "the Indians' participation in litigation critical to their welfare should not be discouraged." Id. at 615.

In reaching its conclusion in Arizona v. California, the Court also indicated that it had weighed several other discretionary factors. It pointed out that intervention by the Tribes would not enlarge the Court's judicial power over the controversy, because the Tribes "do not seek to bring new claims or issues against the States, but only ask leave to participate in an adjudication of their vital water rights that was commenced by the United States." Id. at

614. For the same reason, the Court could find no Eleventh Amendment problem. Id. The Court further commented that the two states opposing the motions to intervene had "failed to present any persuasive reason why their interests would be prejudiced or this litigation unduly delayed by the Tribes' presence," id. at 615, and it observed that the motions were "sufficiently timely with respect to this phase of the litigation." Id.

Three other decisions of this Court cast further light on the prudential concerns which go into weighing whether intervention in a case of original jurisdiction is appropriate. Intervention by a municipality to protect its property interests in an island claimed by the United States, as

intervenor, in a boundary dispute between two states was found proper in Texas v. Louisiana, 426 U.S. 465, 466 (1976), despite the fact that the municipality in question was a political subdivision of one of the state parties.

However, in New Jersey v. New York, 345 U.S. 369 (1953), a similar request for intervention by a municipality was not permitted in a three-state dispute over rights to the waters of the Delaware River. The Court reasoned, inter alia, that the City of Philadelphia's interests were adequately protected by Pennsylvania's participation in the litigation as parens patriae, and that to permit intervention by one of the many cities located along both banks of the Delaware might well lead to similar requests by other municipalities with

equally substantial interests. 345 U.S. at 372-373 (see detailed discussion in subpoint 2, below).

Proliferating requests for intervention were also of concern to the Court in Utah v. United States, 394 U.S. 89 (1969), where it held that "the interests of justice and sound judicial administration" would best be served by denying intervention to a large corporate landowner, Morton International, Inc., in a dispute between the two original parties over ownership of the Great Salt Lake. The lake had shrunk in size over the years and thus laid bare some 600,000 acres of land which had formerly been part of the lakebed. The Court observed that, had the original parties not limited the issues by entering into a stipulation, it would have seemed

"fairest" to permit the corporate landowner to speak for itself. Id. at 92. However, given the existence of the stipulation in question, the Court stated that "we can perceive no compelling reason requiring the presence of Morton in this lawsuit, [while] there are substantial reasons for denying intervention." Id. at 95. The latter included the fact that (1) if Morton were admitted, "fairness would require the admission of any of the other 120 private landowners who would wish to quiet their title to portions of the relicted lands;" and (2) intervention would expand the issues. The Court declined "to permit a private party to introduce new issues which have not been raised by the sovereigns directly concerned." Id. at 96.

(2)

The City's Application Not Only Meets the Standards for Intervention Set Forth in Federal Rule 24(b), But Its Request To Intervene Presents None of the Problems Which Have Persuaded This Court, Or The Lower Federal Courts, to Refuse To Permit Intervention in Other Cases.

From the cases discussed in subpoint (1), supra, the following principles may be distilled: Intervention is appropriately granted where (1) the applicant has a direct interest in the outcome of the litigation, there is a common question of law or fact, and fairness would seem to require its participation; (2) the intervention will not complicate the case by introducing new issues or by raising the prospect of voluminous applications by other persons similarly situated; (3) the interests of the original parties will not be

prejudiced by the presence of the proposed intervenor; and (4) the application is timely and will not delay the litigation. The instant application meets all these requirements.

a. Since the City Will Be Bound by the Final Result of this Litigation, It Should Be Permitted to Defend Its Own Interests Directly.

Since there is no doubt that the City meets Rule 24(b)'s "common question of law or fact" threshold, the primary issue regarding its proposed intervention would appear to be whether its status as a political subdivision of the State of New York presents an impediment to direct participation in this lawsuit. As noted on pages 47-48, supra, this Court permitted just such municipal intervention in Texas v. Louisiana, which concerned a boundary dispute somewhat

similar to the one at issue here. The City of Port Arthur, Texas, was allowed to come in as an intervenor to protect its interest in an island claimed by one of the other parties, despite the fact that the State of Texas was the original plaintiff. 426 U.S. at 466.[3]

The result in Texas v. Louisiana is not at odds with the Court's previous refusal, in New Jersey v. New York, to

---

[3] The published reports contain two references to Port Arthur's intervention, neither of which elaborates on the nature of the City's claim. See, 416 U.S. 965 (1974) (order granting intervenor status); 426 U.S. 465, 466 (1976) (passing reference to the fact that the City was permitted to intervene "for purposes of protecting its interests in the island claims of the United States"). The March 29, 1974 motion papers filed with this Court, however, indicate that Port Arthur was claiming that it had a fee-simple ownership interest in one of the islands in dispute, which it had received by deed from the State of Texas. Motion for Leave to Intervene in No. 36, Original (October Term, 1973), pp. 1, 19-20.

permit the City of Philadelphia to intervene in a dispute over water rights in which Pennsylvania was a party. In discussing the parens patriae doctrine as an obstacle to intervention by a municipality in a suit in which the parent state is already a party, the Court nevertheless envisioned circumstances in which municipal intervention might be appropriate -- i.e., where the municipality possesses "some compelling interest in [its] own right, apart from [its] interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state." 345 U.S. at 373.

The Court could find no such individualized municipal interest in New Jersey v. New York, where it specifically

observed that, in addition to Philadelphia's 2,071,605 citizens, roughly another 2,000,000 State residents were also dependent on the waters of the Delaware. 345 U.S. at 373, note*. In other words, the City of Philadelphia's interest in water rights to the Delaware was not unique; it was shared by numerous other municipalities along the river's banks, municipalities populated by an equal number of Pennsylvania residents, and the State of Pennsylvania was acting as parens patriae in seeking to vindicate rights common to all its citizens living in that geographic region. Indeed, in rejecting Philadelphia's application for intervention, the Court expressed the fear that, under such circumstances, it might ultimately find itself "drawn into an intramural dispute over the

distribution of water within the Commonwealth [of Pennsylvania],'" and that its original jurisdiction would be "expanded to the dimensions of ordinary class actions." Id. at 373. In Texas v. Louisiana, on the other hand, the City of Port Arthur was asserting an interest specific to itself as a municipal entity and not shared with all, or any portion of, the general citizenry of the State of Texas. That is precisely the situation here.

The lower federal courts have recognized the distinction between interests represented by the State as an entity and the more specific interests of its various political subdivisions. In Mille Lacs Band of Chippewa Indians v. Minnesota, 989 F.2d 994 (8th Cir. 1993), for example, a number of counties were

permitted to intervene in a dispute concerning an Indian group's rights, under a treaty with the State, to fish, hunt, and gather on lands within those counties. The Court observed that the counties were attempting to protect local and individual interests, such as loss of the value of their lands, which were narrower than, and not subsumed by, the State's general or sovereign interest in protecting natural resources or preserving naked title to certain territories. Id. at 1001.

In another treaty case, Scotts Valley Band of Pomo Indians v. United States, 921 F.2d 924 (9th Cir. 1990), the City of Chico was permitted to intervene, inter alia, because its interest in the removal of property from its civil jurisdiction, as well as its municipal

interest in its taxing and regulatory powers, were not directly shared by the defendant United States and its officials. Id. at 927. See also, State of New York v. Reilly, 143 F.R.D. 487 (N.D.N.Y. 1992) (affected towns and counties permitted to intervene despite presence of State as plaintiff); State of Illinois v. Butterfield, 396 F.Supp. 632 (N.D. Ill. 1975) (four local governments permitted to intervene on side of plaintiff State). Cf. Sierra Club v. U.S. Environmental Protection Agency, 995 F.2d 1478, 1484 (9th Cir. 1993) (a city has a significant interest in collecting property taxes and imposing land-use, health, and safety regulations); Rhode Island Cogeneration Associates v. City of East Providence, 728 F.Supp. 828 (D. Rhode Island 1990) (state permitted to

intervene in a suit against a municipality challenging a local ordinance because the interests of the two government entities in upholding the validity of the ordinance were different in scope).

In the case at bar, the City of New York has a number of compelling local interests which differ from the State of New York's more generalized interest in property historically considered under the State's control and jurisdiction. As discussed in the Statement of Facts, supra, these local interests range from the protection of the City's civil jurisdiction, with its attendant powers of taxation and regulation; to the economic implications for allocation of funds to the City by the State and federal governments flowing now, and in

the future, from having Ellis Island included within the City's boundaries for census purposes; to the aesthetic, historical and environmental concerns represented by the City's designation of the Island as an Historic District under its Landmarks Preservation Law. These interests are certainly not adverse to the interests of the general citizenry represented by the State as parens patriae, but, as in the case of the City of Port Arthur in Texas v. Louisiana, they are not coterminous.

The existence of differing, although not adverse, interests also bears on the second prong of New Jersey v. New York's parens patriae analysis. On the question of whether the State will "properly" represent the particularized interests of one of its political subdivisions, a

lower court has pointed out that the presumption of adequate representation does not arise when a locality's parochial interests are not necessarily shared by the general citizenry of the State. Mille Lac Band of Indians v. Minnesota, supra, 989 F.2d at 1001. Indeed, this would seem to be the import of this Court's decision in Texas v. Louisiana permitting intervention by the City of Port Arthur.

Other courts have emphasized, in various contexts, that the "tactical similarity of the legal contentions" of a current party with that of a proposed intervenor does not necessarily assure adequate representation, where, as here, the same goal is sought but the interests represented by the parties are different. Sierra Club v. Robertson, 960 F.2d 83, 86

(8th Cir., 1992) (State of Arkansas permitted to intervene as plaintiff in a challenge to federal forest management practices because the State's interests were broader than those of the plaintiff environmental association); Nuesse v. Camp, 385 F.2d 694, 703 (D.C.Cir. 1967) (intervention by a State official in a suit by a private bank proper for the same reason). But see, United States v. Hooker Chemicals, 749 F.2d 968 (2nd Cir. 1984); Environmental Defense Fund, Inc. v. Higginson, 631 F.2d 738 (D.C.Cir. 1979).

In sum, to the extent that there is any question about the propriety of permitting intervention by a municipality in a border dispute between States concerning territory within a city's civil jurisdiction, Texas v. Louisiana is

dispositive and the instant application should be granted. Given New York City's compelling interest in the instant litigation, an amicus curiae submission cannot adequately substitute for participation as a party. See, Sierra Club v. Espy, 18 F.3d 1202, 1207 (5th Cir. 1994); Nuesse v. Camp, supra, 385 F.2d at 704, n. 10. The City is also in a position to be able to contribute its resources and its access to specialized knowledge to aid the Court in resolving this litigation.[4] See, State of Utah v. Kennecott Corp., 801 F. Supp. 553, 572 (D. Utah 1992), cert. denied __ U.S. __,

---

[4] As a party, the City would be actively responsible for locating and assessing documentary records in the possession of its specialized agencies which might bear on this litigation, as well as for providing witnesses in the form of personnel qualified to authenticate or comment on those records.

115 S.Ct. 197 (1994). Under such circumstances, and given that none of the other factors bearing on the intervention issue require a contrary result (see subsections b and c, below), the City should be given the opportunity afforded by intervention to persuade the Court that New Jersey's position is without merit.

b. Intervention by the City Will Not Complicate the Litigation.

As in the case of the intervention by the Indian Tribes permitted in Arizona v. California, the City does not seek to introduce any new issues into this case, but only to participate in litigation critically affecting its municipal interests. Nor would intervention by the City raise the spectre of voluminous applications for intervention by other

entities which this Court found so troublesome in New Jersey v. New York, supra, 345 U.S. at 373, and Utah v. United States, supra, 394 U.S. at 95. New York City is the only municipality within this State which can assert interests sufficient to justify intervention.[5]

c. Since This Application is Timely, Intervention by the City Will Not Prejudice the Original Parties.

The prejudice to the original parties which this Court indicated in Arizona v. California, supra, 460 U.S. at 615, might weigh against permitting intervention is prejudice created by the

---

[5] We cannot speak for the State of New Jersey, but a reading of the prior papers submitted to this Court suggests that the only such attempt to intervene might possibly be made by Jersey City.

proposed intervenor's delay in moving to be admitted as a formal party, not prejudice to existing parties if intervention is allowed. Ceres Gulf v. Cooper, 957 F.2d 1199, 1203 (5th Cir. 1992). The need of the original parties to respond to additional briefing does not constitute prejudice. See, Employee Staffing Services v. Aubry, 20 F.3d 1038, 1042 (9th Cir. 1994).

On the issue of the timeliness requirement in Federal Rule 24, this Court has indicated that timeliness is to be determined from all the circumstances, in the discretion of the Court. NAACP v. Branch, 413 U.S. 345, 366 (1973). Absolute measures of timeliness do not control, since the requirement is "not a tool of retribution to punish the tardy would-be intervenor, but rather a guard

against prejudicing the original parties by the failure to apply sooner." Sierra Club v. Espy, 18 F.3d 1202, 1205 (5th Cir. 1994). The point to which the suit has progressed is one factor to be considered, but it is not solely dispositive. NAACP v. New York, supra, 413 U.S. at 366. Similarly, the date on which a proposed intervenor became aware of the pendency of the action is not necessarily determinative. Sierra Club v. Espy, supra, 18 F.3d at 1206.

As described in the Affidavit of Kristin M. Helmers supplied herewith, the City of New York was aware, through contemporaneous news accounts, of the progress of the litigation from this Court's announcement of its decision to accept it as a case of original jurisdiction, through the Court's

appointment six months later of a special master. However, during this period, we were unaware that the Court's rules governing such controversies permitted intervention. It was not until mid-January 1995 that research revealed that a motion to intervene could be considered by the Court, and the instant application is being made under the date of February 23, 1995.

Under the circumstances, we submit that the timeliness requirement has been met. The City moved with dispatch once it determined that it was possible to protect its interests through intervention, and the litigation is still, as of this writing, in the early stages of discovery. Accordingly, there can be no prejudice to the original parties, whereas intervention, if granted, would

permit the City to contribute its resources and unique perspective to a just and equitable determination of the legal issues under consideration by the Court.

CONCLUSION

THE APPLICATION BY THE CITY OF NEW YORK TO INTERVENE AS A PARTY DEFENDANT SHOULD BE GRANTED.

Respectfully submitted

PAUL A. CROTTY,
Corporation Counsel
of the City of New York

LEONARD KOERNER,*
STANLEY BUCHSBAUM,
KRISTIN M. HELMERS,
of Counsel.

* Attorney of Record

No. 120, Original

In the Supreme Court of the United States
October Term, 1994

STATE OF NEW JERSEY,

Plaintiff,

- v. -

STATE OF NEW YORK,

Defendant,

- and -

THE CITY OF NEW YORK, RUDOLPH W. GIULIANI, as Mayor of the City of New York, and the CITY COUNCIL OF THE CITY OF NEW YORK,

Proposed Defendants-Intervenors.

ANSWER TO THE COMPLAINT OF THE STATE OF NEW JERSEY BY THE PROPOSED DEFENDANTS-INTERVENORS

The City of New York, including its Mayor and City Council, for its Answer to the Complaint of the State of

New Jersey, states, through its counsel, as follows:

1. It admits the allegations of paragraph 1 insofar as plaintiff purports to bring this action pursuant to Article III, Section Two, Clause Two of the Constitution of the United States, 28 U.S.C. § 1251(a).

2. It admits the allegations of paragraph 2 insofar as Ellis Island was approximately three acres in size when the boundary between New York and New Jersey in the New York harbor area was established by compact in 1834, by which New York State's jurisdiction over the full extent of the Island was preserved; the Island was subsequently augmented by artificial fill; the Island is currently approximately 27.5 acres in size; the whole of the Island lies within the

territorial and sovereign jurisdiction of the State of New York. It affirmatively states that Ellis Island also has been, since at least 1730, and continues to be, subject to the local civil jurisdiction of the City of New York. It denies the remainder of paragraph 2.

3. It admits the allegations of paragraph 3 that the opinion of the United States Court of Appeals for the Second Circuit in Collins v. Promark Products, Inc., 956 F.2d 383 (2d Cir. 1992), "reflects a determination that the whole of Ellis Island, including the lands artificially filled after 1834, is within the territory of New York and subject to its governmental jurisdiction," and that the New York City Landmarks Preservation Commission held a hearing on November 10, 1993 on the

question of whether the whole of Ellis Island should be declared a City landmark. It affirmatively states that, on November 16, 1993, the Landmarks Preservation Commission designated Ellis Island a "Historic District" under Section 3020 of the New York City Charter and Chapter 3, Title 25 of the New York City Administrative Code. It denies the remainder of paragraph 3.

4. It denies having knowledge or information sufficient to form a belief as to the future actions of the National Park Service alleged in paragraph 4. It respectfully refers the Court to the New York Public Authorities Law § 1675 et seq. for the true content of that statute. It denies the remainder of paragraph 4.

5. It admits the allegations of paragraph 5 insofar as New York, New Jersey, and the United States ratified a Compact on the dates alleged. It respectfully refers the Court to the Compact for its true content. It denies the reminder of paragraph 5.

6. It denies the allegations of paragraph 6 and respectfully refers the Court to the entire Compact for its true content.

7. Paragraph 7 states legal conclusions to which no response is required. If a response is required, it denies the allegations of paragraph 7 and respectfully refers the Court to the entire Compact for its true content.

8. It denies the allegations of paragraph 8.

9. It admits the allegations of paragraph 9, but denies the implication that the 1834 Compact in any way limited New York State's jurisdiction over Ellis Island to the original dimensions of the Island.

10. It admits the allegations of paragraph 10 inasmuch as the United States Government purchased any and all title and interest held by New Jersey to certain submerged lands around Ellis island; a deed conveying such title and interest was delivered by New Jersey to the United States on November 30, 1904; the New York Times published an article on July 19, 1904, addressing an application to enlarge Ellis Island. It denies knowledge or information sufficient to form a belief as to the accuracy of the facts reported in that

article, or as to how the Island was "sometimes * * * referred to" by employees on the Island or the United States Government. It respectfully refers this Court to the text of the 1904 grant and the July 19, 1904, news article for the true content of those documents. It denies the remainder of paragraph 10.

11. It denies the allegations of paragraph 11.

12. It denies the allegations of paragraph 12.

13. It denies each and every allegation of paragraph 13 and its subparagraphs, except as hereafter described:

13(a). It denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13(a). It affirmatively states

that Ellis Island has been under the local civil jurisdiction of the City of New York since pre-Revolutionary times.

13(b). It denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13(b). It affirmatively states that Ellis Island has been under the local civil jurisdiction of the City of New York since pre-Revolutionary times.

13(c). It admits that the New York Times reported a letter from Dr. McLean to Director Downey in an article on July 21, 1955. It respectfully refers this Court to the text of the article for its true content. It denies knowledge or information sufficient to form a belief as to the accuracy of the facts reported in the article.

13(d). It admits that the Congressional Record dated July 30, 1955 reports remarks of New Jersey Congressman Thomas J. Tumulty, and the Congressional Record dated August 1, 1955 reports remarks of New York Congressman George Klein. It respectfully refers this Court to the text of the Congressional Record for the true content and context of those remarks. It admits that Pub. L. No 341, c. 779, 69 Stat. 632 was approved on August 11, 1955. it denies the implication that the remarks of Congressman Tumulty have any bearing on New York City's longstanding civil jurisdiction over Ellis Island.

13(e). It admits that the New York Times reported a trip to Ellis Island by various New Jersey political officials in an article on January 5,

1956. It respectfully refers this Court to the text of that article for its true content. It denies knowledge or information sufficient to form a belief as to the accuracy of the facts reported in the article. It admits that the Congressional Record dated March 7, 1956, reports remarks of New York Congressman Irwin D. Davidson. It respectfully refers this Court to the text of the Congressional Record for the true content of those remarks. It denies knowledge or information sufficient to form a belief as to whether or for what purpose Jersey City Mayor Gangami travelled to Ellis Island in October 1962.

13(f). It admits that the New York Times reported a telegram communication from a New Jersey State Senator to New Jersey Senators and

Congressmen in an article on January 3, 1958. It respectfully refers this Court to the text of that article for its true content. It denies knowledge or information sufficient to form a belief as to the accuracy of the facts reported in the article. It denies the implication that the telegram communication has any bearing on New York City's longstanding civil jurisdiction over Ellis Island.

13(g). It admits that The Newark News reported a proposed meeting and exchange between New Jersey and New York state officials in an article on July 22, 1960. It respectfully refers this Court to the text of that article for its true content. It denies knowledge or information sufficient to form a

belief as to the accuracy of the facts reported in the article.

13(h). It admits that hearings on the disposal of Ellis Island were held before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations in September and December 1962, and that Jersey City Corporation Counsel Meyer Pesin and others testified at that hearing on December 6, 1962. It denies that "[m]uch of the discussion by those who testified concerned 'the question of jurisdiction over the island between the States of New York and New Jersey'". It respectfully refers this Court to the transcript of the hearings of the Subcommittee for the true content of those hearings. It denies the implication that testimony before the

Subcommittee constituted action or an assertion of sovereignty by the State of New Jersey, or of civil jurisdiction over the Island by a municipality other than the City of New York.

13(i). It admits that Jersey City enacted a zoning ordinance purportedly directed at Ellis Island on September 5, 1963, and that a copy of that proposed ordinance was submitted prior to its enactment to the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations on September 4, 1964. It denies that the ordinance "would control any development on the island if it were sold to private interests". It denies the implication that the ordinance constituted action or an assertion of sovereignty by the State of New Jersey,

or of civil jurisdiction over the Island by a municipality other than the City of New York.

13(j). It admits that a complaint was filed in Guarini v. State of New York, 215 N.J. Super. 426, 521 A.2d 1362 (Chan. Div. 1986), aff'd, 215 N.J. Super. 293, 521 A.2d 1294 (App. Div. 1986), certif. den., 107 N.J. 77, 526 A.2d 157 (1987), cert. denied, 484 U.S. 817 (1987). It denies that the sovereignty and jurisdiction of the State of New York and the State of New Jersey over Ellis Island were properly at issue in that case. It admits that New Jersey, a defendant in that action, filed an answer dated January 9, 1985. It respectfully refers the Court to the text of that answer for its true content and context. It denies that the position of

New Jersey during that litigation "was consistent with" New Jersey's allegation in paragraph 2 of the Complaint. It respectfully refers this Court to the text of the decisions in Guarini for the true contents of the courts' findings in that matter.

13(k). It admits that Governors Cuomo and Kean signed a Memorandum of Understanding on June 23, 1986. It respectfully refers the Court to the text of the Memorandum for its true content. It admits that the Memorandum was incorporated by New Jersey into its laws in 1987 and that the Memorandum has not been incorporated into the laws of New York. It denies that the Memorandum was "only a partial attempted resolution of this dispute".

13(l). It admits that the states of New Jersey and New York appeared as amici curiae before the Second Circuit in the Collins v. Promark Products matter. It respectfully refers this Court to the text of the decision of the Second Circuit for its true content.

14. It admits the allegations of paragraph 14 insofar as New York State has always included the full extent of Ellis Island in its jurisdiction and in the jurisdiction of the County of Manhattan in the City of New York, for purposes of United States Congressional districts, New York State Senate and Assembly districts, and for other purposes. It denies that such inclusion was in any manner improper.

15. It denies the allegations of paragraph 15.

16. It denies knowledge or information sufficient to form a belief as to the existence and/or nature of any correspondence between the New York and New Jersey Attorneys General. It denies knowledge or information sufficient to form a belief as to the existence or nature of communications to the New Jersey Historic Preservation Office. It denies knowledge or information sufficient to form a belief as to what Center Development Corporation "anticipates". It admits that the New York City Landmarks Preservation Commission declared Ellis Island to be a New York City "Historic District" on November 16, 1993. It respectfully asserts that the allegations relating to the current legal status and effect of the 1986 Memorandum of Understanding are

legal conclusions, to which no responses are required.

AND AS FOR ITS DEFENSES AND AFFIRMATIVE DEFENSES HEREIN, THE CITY OF NEW YORK ALLEGES:

FIRST

17. The plaintiff has failed to state a claim upon which relief can be granted.

SECOND

18. The Montgomerie Charter of 1730 specifically placed Ellis Island under the civil jurisdiction of the City of New York, and that status, with its concomitant regulatory and taxing powers, has continued uninterrupted through the present.

THIRD

19. In September, 1833, commissioners representing the States of New York and New Jersey entered into a

compact to define the territorial limits and jurisdictional powers of each State in New York harbor. The agreement was ratified by the New York and New Jersey legislatures, and was approved by the U.S. Congress on June 28, 1834. Laws of New York 1834, Ch. 8; Laws of New Jersey 1833-34, p. 118; 4 Stat, 728, Ch. 126 ("1834 Compact").

20. While the provisions of the 1834 Compact established the general boundary line between the two States as the middle of New York Bay (Article I), that boundary was modified by several exceptions, both general and specific. Under Article Two, New York was to "* * * retain its present jurisdiction of and over Bedlow's and Ellis's Islands * * *"; under Article Three, New York was to have "exclusive jurisdiction" over all waters

of the bay and of the lands covered by said waters subject to certain rights of New Jersey. The Compact did not limit New York State's sovereignty over Ellis Island, or New York City's civil jurisdiction over the Island, to a fixed geographic dimension.

21. Under the terms of the 1834 Compact, New York State retained sovereignty and jurisdiction over the entirety of Ellis Island to the extent permitted by the federal government, including sovereignty and jurisdiction overs such additions to the Island that might subsequently be added by fill. New York City similarly retained civil jurisdiction over the Island as an entity, including subsequent expansion of its acreage due to filling operations.

FOURTH

22. The City of New York realleges and incorporates herein each and every allegation set forth in paragraphs 19-21 hereof, as if fully set forth herein.

23. Throughout the history of Ellis Island, the full extent of the Island has been included within the civil jurisdiction of New York City and State for a wide variety of legal and civic purposes. The Island's residents, including residents occupying its fill portion, have voted in New York City election districts, been subject to New York City regulation for taxation and other local purposes, and have been counted as New York City residents in State and Federal censuses.

24. This exercise of local civil jurisdiction over a well-populated area

in New York Harbor was considerable and unconcealed, endured across several centuries, and included the whole of the Island at all times.

25. At no time during this period did the State of New Jersey seek to assert a meaningful sovereign claim over any portion of Ellis Island, despite many opportunities to do so. Rather, that State acquiesced in the exercise of sovereignty and jurisdiction by the State of New York, and of local civil jurisdiction by the City of New York.

26. By principles of prescription and acquiescence in the time-honored exercise of sovereignty and jurisdiction over the Island by the State of New York, New York State currently has jurisdiction and sovereign authority over Ellis Island in its entirety, including those parts of

the Island enlarged by fill after 1890. The City of New York similarly exercises local civil jurisdiction over the Island in its entirety, including those portions of the Island enlarged by filling operations after 1890.

WHEREFORE, this Court should enter judgment dismissing the complaint, or declaring that the full extent of Ellis Island lies within the legal jurisdiction of the State and City of New York, and granting such other and further relief as the Court may deem proper.

Dated: New York, New York
February 23, 1995

PAUL A. CROTTY
Corporation Counsel of
the City of New York
100 Church Street
New York, New York 10007
(212) 788-1072

LEONARD KOERNER,*
STANLEY BUCHSBAUM,
KRISTIN M. HELMERS,
of Counsel. *Attorney of Record